

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG. 4, 2005★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

x

FRANCISCO TORRES,

Petitioner,

ORDER

- against -

VICTOR HERBERT, Superintendent,
Attica Correctional Facility,

Civil Action No.
02-CV-5268 (DGT)

Respondent.

x

TRAGER, J.

On September 19, 2002, petitioner filed the above-captioned case seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254 from his state court conviction for criminal sale of a controlled substance in or near school grounds. The petition was referred to United States Magistrate Judge Lois Bloom for a Report and Recommendation.

On June 11, 2003, Judge Bloom issued a Report and Recommendation recommending that the petition be dismissed as time-barred. As stated in Judge Bloom's Report and Recommendation, objections were due on or before June 23, 2003. In an order dated July 3, 2003, this court adopted Judge Bloom's Report and Recommendation dismissing the writ of habeas corpus.

In a letter dated June 19, 2003, petitioner asked for additional time to lodge objections to Judge Bloom's Report and Recommendation. In an order dated July 10, 2003, this court vacated the July 3, 2003 order and provided petitioner 10 additional days to file objections.

In the meantime, and likely before receiving note of the order vacating final judgment, petitioner filed a notice of appeal, dated July 19, 2003. On August 15, 2003, this court denied a Certificate of Appealability. Nevertheless, the notice of appeal was transmitted to the United States Court of Appeals for the Second Circuit. In a mandate dated September 8, 2004, the Second Circuit denied petitioner's request for a Certificate of Appealability and dismissed the action with prejudice. However, petitioner's objections, dated July 28, 2003, were still pending before this court.

In a letter dated July 10, 2005, petitioner requested that this court revisit the case and enter final judgment in his favor based on his objections. Upon review of the objections to Judge Bloom's Report and Recommendation, this court finds that the July 28, 2003 objections do not raise any issue warranting reconsideration of this court's initial adoption of Judge Bloom's Report and Recommendation.

Conclusion

For the foregoing reasons, petitioner's motion is denied. The Clerk of the Court is directed to close the case.

Dated: Brooklyn, New York
August 1, 2004

ORDERED:

s/David G. Trager
David G. Trager
United States District Judge

SENT TO:

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